IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.71 OF 2001

IN

NOTICE OF MOTION NO.3341 OF 2000

IN

SUIT NO.4771 OF 2000

SBI Capital Markets Ltd. ...Appellants

v/s

Gilt Pack Ltd. ...Respondents

Mr Pravin Diwan i/b M/s Kanga and Co. for Appellants.

Mr H.N. Thakore i/b M/s Thakore Jariwalla and Associates for Respondents.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 3RD OCTOBER 2007.

P.C. :-

1. By this appeal, the appellants challenge the order dated 1st December 2000 passed by the learned Single Judge of this Court in notice of motion No.3341 of 2000. By that order, the learned Single Judge has rejected the notice of motion taken out by the appellants - plaintiffs. The plaintiffs have filed the suit seeking a decree of possession of the machinery, which according to the plaintiffs, is owned by the plaintiffs and has been given on lease to the defendants. There is no dispute that the plaintiffs are owners of the machinery and that it has been given on lease to the defendants. There is also no dispute that the defendants have committed default in payment of agreed lease rentals. It appears that the defendants were sick industrial company, therefore proceedings were started before the B.I.F.R., but pendency of the proceedings before the B.I.F.R. could not have affected the claim of the plaintiffs because the plaintiffs' suit was for recovery of their own property. A scheme for rehabilitation of the defendant - Company was formed and the appellants had given their consent to the scheme. The learned Single Judge has rejected the notice of motion in view of the consent given by the plaintiffs.

It is pointed out that under the scheme, lease rentals were agreed to be paid by the defendants to the plaintiffs. It is also pointed out that even after sanction of the scheme, the defendants did not pay lease rentals and the lease was terminated by the plaintiffs. It is not in dispute that presently the lease of the machinery has been terminated by the plaintiffs. The defendants are in possession of the machinery even though the original period of lease has expired. The complaint of the plaintiffs is that even after sanction of the rehabilitation scheme, the plaintiffs have not paid either the arrears of lease rentals or current lease rentals. As admittedly the machinery belongs to the plaintiffs and the lease of the machinery has been terminated, the in our opinion, the plaintiffs are entitled to claim that Court Receiver should be appointed on the machinery. However, considering that there is a rehabilitation scheme sanctioned and if defendant - Company is running on the basis of that machinery, then the defendants can continue in possession of the machinery as agents of the Court Receiver. In our opinion, following order would meet the ends of justice.

2. The order impugned in the appeal is set aside. Notice of motion No.3341 of 2000 is granted in terms of prayer clause (a) excluding the bracketed portion. The

Court Receiver shall initially take symbolic possession and offer to the defendants agency of the Court Receiver to be in possession of the machinery on usual terms and conditions including royalty and security. If the defendants do not execute agency agreement within a period of six weeks from the date on which it is offered to the defendants, the Court Receiver shall take physical possession of the machinery and hand it over to the plaintiffs, also as agents of the Court Receiver on usual terms and conditions but without security and royalty. In that event, the plaintiffs shall be entitled to apply for further reliefs. Till the Court Receiver takes possession, ad-interim order in terms of prayer clause (b) of the motion shall operate. Notice of motion No.3341 of 2000 is disposed off.

. Court Receiver and parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)